

IN THE MATTER OF

TSC/ROUTE 32, LLC

Petitioner

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 08-027V

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DECISION AND ORDER

On July 21, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of TSC/Route 32, LLC for variances to reduce the setbacks for retaining walls, exterior building egress stairs and a walkway from 20 feet to 4 feet and to reduce two 40-foot parking space and loading setbacks to 9 or 15 feet in a CE-CLI (Corridor Employment-Continuing Light Industrial Overlay) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the property owner. Robert Vogel and Gary M. Evans testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is situated on the west side of Guilford Road about 1,200 feet southeast of US 1 and has no current address. It is located in the 6th Election District and is identified on Tax Map 47, Grid 12, as Parcel 59 (the "Property").

2. The 8.05-acre Property is an irregular, somewhat-L shaped, parcel. It has about 374 frontage feet along Guilford Road and the long, rear, westerly lot line jags along the MD 32 exit lane right-of-way ("ROW"). It is mostly wooded and unimproved. A stream bisects the Property in the south and southeasterly areas and the elevation drops some 40 from the high point in the northwest corner to the lowest point in the southwest corner.

3. Vicinal Properties. The adjoining Property to the north is zoned CE-CLI and is partially developed with a non-profit thrift store. Across Guilford Road to the north and northeast is an M-2 zoned property improved with a warehouse development. On the Property's south side, the M-2 zoned Parcel 87 is used for residential purposes (a mobile home and a single-family detached dwelling).

4. Roads. Guilford Road along the Property's frontage has two travel lanes and about 45 feet of paving within a variable right-of-way. A wide acceleration lane across Guilford Road accounts for the width of the paved area. The estimated sight distance from the proposed entrance is about 300 feet to the northwest and more than 600 feet to the southeast. The more limited sight distance to the northwest is due in part to a curve in the road and existing vegetation. There is no current traffic volume data for this section of Guilford Road.

5. The Property is served by public water and sewer.

6. The General Plan's 2000-2020 Policies Map designates the Property as "Employment Areas and Redevelopment Corridor." Guilford Road is depicted as a Local Road on the Plan's Transportation Map.

7. The Petitioner proposes to develop the Property with two flex space buildings and an office building. A 34,818-square foot flex building would be constructed about 320 feet southwest of the Guilford Road entrance. The second, 31,903-square foot building would be

constructed about 160 feet to the northwest of the larger building, separated by a loading dock and drive aisle. A driveway would provide access from the northwest portion of the Guilford Road frontage to these buildings. The driveway would run to the southeast, crossing a stream. Two parking lots are proposed, one in the small wedge shaped area beyond the smaller building and a second to the east and southeast of the larger building.

The Petitioner is also proposing a two-story, 14,350-square foot office building with a separate driveway in the Property's southeastern area (between Guilford Road and the stream). Parking would be provided to the building's north and west.

8. To support the development, the Petitioner is requesting variances from: (1) Section 127.E.2.a(1) to reduce the 20-foot setback from the MD 32 external public street ROW to a minimum of 4 feet for retaining walls, exterior stairs and walkway; (2) Section 127.E.2.a(2) to reduce the 40-foot setback from the MD 32 external public street ROW to a minimum of 9 feet for parking and loading spaces, and; (3) Section 127.E.2.a(2) to reduce the 40-setback from the Guilford Road external street ROW to 15 feet for parking uses related to the office building;

9. Robert Vogel, the project engineer, testified the site has considerable environmental constrictions, including a stream buffer and a 40-foot drop in elevation. Owing to this drop in elevation, retaining walls would be required for any flex development because these uses and structures require a flat elevation. Additionally, the Property's shape and dimensions cause the site to lose a significant amount of developable area. The setbacks and buffers take up 2.64 acres, or about 33 percent of the 8.06-acre site. The variance area comprises about .023 acres, or about 3 percent of the site. Referring to Applicant's Exhibit 1, Page 8 of the Route 1 Manual, Mr. Vogel also stated the 40-foot ROW setbacks for CE-zoned properties are intended to encourage parking to the side and rear of buildings along Route 1.

10. In response to questioning, Mr. Vogel stated that a Type E Landscape Buffer would generally be required along the edge of Guilford Road where parking is proposed. It was his opinion that the site plan and proposed use are compatible with area uses.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4) and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the

property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's double frontage, irregular shape and the 40-foot drop in elevation on the Property's western edges are exceptional relative to neighboring M-2 properties. I therefore conclude the Property's unique shape and topography cause the Petitioner practical difficulties in complying with the 30-foot structure setback requirement, in accordance with Section 130.B.2.a(1).

2. Although the retaining walls, stairs, parking spaces and walkways will encroach on the MD 32 and Guilford Road rights-of-way, these uses and accessory structures will still be well separated from the exit ramp and Guilford Road, which will be buffered from the parking by Type E landscaping. Because the requested relief in this case is from the 40-foot parking and loading setbacks from MD 32 and Guilford Road, and not from US 1, as Mr. Vogel and the Technical Staff Report observed, the granting of the requested variances will not frustrate the design purposes of the Route 1 Manual. I therefore conclude the granting of the variances will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the Property's shape and physical location and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The requested variances apply only to a small section of the Property, 3 percent of the 8.06-acre site. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 30th day of July 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of TSC/Route 32, LLC, for variances from Section 127.E.2.a(1) to reduce the 20-foot setback from the MD 32 external public street ROW to a minimum of 4 feet for retaining walls, exterior stairs and walkway; from Section 127.E.2.a(2) to reduce the 40-foot setback from the MD 32 external public street ROW to a minimum of 9 feet for parking and loading spaces, and; from Section 127.E.2.a(2) to reduce the 40-setback from the Guilford Road external street ROW to 15 feet for parking uses related to the office building are hereby **GRANTED**;

Provided, however, that the variances will apply only to the uses and structures being requested and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFaivre

Date Mailed:

8/1/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.